

## Complaint.

## FEDERAL TRADE COMMISSION

v.

## UNION PENCIL COMPANY, INC.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5  
OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914.

Docket 759—July 19, 1921.

## SYLLABUS.

Where a corporation competitively engaged in imprinting or stamping upon pencils the name requested by the purchaser, with the effect of misleading customers and the public, advertised "High grade pencils engraved in gold"; notwithstanding the fact that the substance used for such imprinting contained no gold: *Held*, That such false and misleading advertising, under the circumstances set forth, constituted an unfair method of competition.

## COMPLAINT.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Union Pencil Co., Inc., hereinafter referred to as the respondent, has been and is using unfair methods of competition in violation of the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the city of New York, in said State.

PAR. 2. That respondent is engaged in the business of selling pencils upon which are imprinted, by the respondent, the name of the purchaser or the name of some other person designated by the purchaser, and respondent causes pencils sold by it to be transported to the purchasers thereof from the State of New York through and into other States of the United States, and carries on such business in direct, active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 3. That respondent, in the course of its business as described in paragraph 2 hereof, causes to be inserted in newspapers of general circulation, advertisements which contain false and misleading statements of and concerning the pencils sold by it; that among such false and misleading statements is a statement to the effect that pencils sold by respondent are "engraved in gold," whereas, in the process of imprinting the name of the purchaser or other

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person on such pencils, gold leaf is not used, or gold in any other form, but a substance known as "autofoil," which contains no gold, is used; that such advertisements are calculated to and do mislead and deceive the purchasing public, and customers are induced to buy pencils from respondent upon the mistaken belief that the printed matter thereon is in genuine gold and not an imitation of gold.

PAR. 4. That by reason of the facts recited, the respondent is using an unfair method of competition in commerce, within the meaning and intent of section 5 of an act of Congress entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

## REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

Pursuant to the provisions of an act of Congress approved September 26, 1914, the Federal Trade Commission issued and served a complaint upon the respondent, Union Pencil Co., Inc., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act.

The respondent having entered its appearance in its own proper person and its answer herein, thereafter, and on June 27, 1921, it entered and filed its amended answer, whereby it withdrew its said answer originally filed, and admitted each and all of the allegations and charges of said complaint, and waived any and all right and privilege of introducing testimony and evidence in its own behalf, and of offering oral argument before the Commission, and of filing written briefs in this said cause, and agreed and consented that the Commission should proceed forthwith, upon the said complaint, to conclude and dispose of this said cause by entering its findings as to the facts, its conclusion, and its final order herein, notice thereof being waived by the respondent, all as will more fully appear from the files and records of this cause.

And thereupon this proceeding came on for final hearing, and the Commission, having duly considered the record, and being now fully advised in the premises, makes this its findings as to the facts and conclusion:

## FINDINGS AS TO THE FACTS.

PARAGRAPH 1. That the respondent is a corporation organized and existing under the laws of the State of New York with its principal place of business in the city of New York, in said State.

PAR. 2. That respondent is in the business of selling pencils upon which, at the request of its customers, it imprints or stamps the name of the purchaser or the name of some other person designated by the purchaser.

## Order.

PAR. 3. That these pencils so stamped or imprinted are sold by the respondent to be transported and are transported in interstate commerce to the purchasers thereof from the State of New York through and into other States of the United States, and that respondent carries on such business in direct active competition with other persons, partnerships, and corporations similarly engaged.

PAR. 4. That respondent, in the course of its business as described herein, causes to be inserted in newspapers of general circulation advertisements of its pencils which advertisements so inserted contain the words "High grade pencils engraved in gold."

PAR. 5. That said pencils are not engraved in gold, but, on the contrary, in the process of imprinting the name of the purchaser or other person on such pencils gold leaf is not used or gold in any other form but a substance known as "autofoil," which contains no gold, and that, accordingly, this statement that the "pencils are engraved in gold" is false and misleading.

PAR. 6. That the statements in the said advertisements were known by the respondent at the time that they were made to be false and calculated to mislead and deceive the public who purchased said pencils.

PAR. 7. That relying on said false statements in said advertisements customers were induced to buy said pencils from the respondent upon the mistaken belief that the printed matter thereon is imprinted in genuine gold and not in an imitation of gold, and this to their damage.

PAR. 8. That certain of the competitors in interstate commerce of the respondent engaged in the same business also advertised pencils "engraved in gold" and these said competitors do in truth imprint the name of the purchaser or other person upon the said pencils so sold, using genuine gold leaf in said process of imprinting.

## CONCLUSION.

The practices of the said respondent, under the conditions and circumstances described in the foregoing findings, are unfair methods of competition in interstate commerce and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

## ORDER TO CEASE AND DESIST.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the amended answer of the respondent, and the Commission having made its findings as

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to the facts with its conclusion, that the respondent has violated the provisions of the act of Congress, approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,"

*It is now ordered,* That respondent, Union Pencil Co., Inc., and its officers, directors, representatives, agents, and servants, do cease and desist from selling, offering for sale, or holding out, in any advertisement or otherwise, any pencil or pencils as "engraved in gold," unless the same be in truth and in fact engraved in gold.

*And it is further ordered,* That respondent, Union Pencil Co., Inc., within 60 days after service upon it of this order, enter and file its report in writing, setting forth in detail the manner and form in which this order has been complied with.

SUNLIGHT CREAMERIES.

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Complaint.

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*v.*

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